

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LYNDA THOMAS,

Plaintiff,

v.

APEX FINANCIAL MANAGEMENT,
LLC,

Defendant.

NO: CV-10-067-RMP

SCHEDULING ORDER AND
ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

A telephonic scheduling conference was held on June 28, 2010. Jon Robbins appeared on behalf of Plaintiff Lynda Thomas. Jeffrey Hasson appeared on behalf of Defendant Apex Financial Management, LLC.

Having reviewed the Defendant's Motion to Dismiss (Ct. Rec. 3) and the parties' Joint Status Certificate (Ct. Rec. 12), heard from counsel, and been fully advised in this matter, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss (Ct. Rec. 3) is **DENIED** with leave to renew.

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1 2. Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, the
2 parties shall disclose the following:

3 (a) A list of all individuals, including addresses and phone numbers, if
4 known, who are likely to have discoverable information relevant to any issue in the
5 case;
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7 (b) A copy or description of all documents and tangible things that may be
8 relevant to any issue in the case;
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10 (c) A computation of any damages claimed by any party; and
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12 (d) A description of any insurance agreement that must be made available
13 for inspection and/or copying.
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15 3. All non-dispositive hearings in which oral argument has been requested
16 shall be conducted telephonically unless approved for in-person argument by the
17 Court. If the in-person argument is desired, the parties must advise the Court why
18 in-person argument would be appropriate when contacting the Court to schedule
19 the hearing. All dispositive hearings in which oral argument has been requested
20 shall be set for in-person appearance; however, the parties may request to appear
21 telephonically.
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23 4. By **February 11, 2011**, the parties shall file a Settlement Status
24 Certificate stating whether they have arranged for mediation or if they would be in
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28 SCHEDULING ORDER AND ORDER DENYING DEFENDANT'S MOTION
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1 agreement to schedule mediation with one of the court's full-time magistrates. A
2 Telephonic Status Conference to address the Settlement Certificate has been set for
3 **February 18, 2011 at 9:00 a.m.** On the date and time scheduled for the status
4 conference, the parties shall call the Court's conference line at (509) 458-6380.
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6 5. The parties shall exchange the materials identified in Fed. R. Civ. P.
7 26(a)(2)(B) in accordance with the following schedule, but shall not file these
8 materials with the Court.
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10 The parties shall identify expert witnesses to be called at trial and shall
11 exchange Rule 26 materials, including expert witness reports, for those witnesses
12 on or before **October 14, 2010**, for all issues on which they bear the burden of
13 proof. Ordinarily, that means that Plaintiff shall disclose experts supporting its
14 case-in-chief, and that Defendant shall disclose experts supporting any affirmative
15 defenses.
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17 The parties shall identify expert witnesses to be called at trial and shall
18 exchange Rule 26 materials, including expert witness reports, for those witnesses
19 on or before **November 12, 2010**, for all issues on which the opposing party bears
20 the burden of proof. Ordinarily, that means that Defendant shall disclose experts
21 opposing Plaintiff's case-in-chief, and that Plaintiff shall disclose experts opposing
22 any affirmative defenses.
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28 SCHEDULING ORDER AND ORDER DENYING DEFENDANT'S MOTION
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1 All rebuttal expert witnesses shall be identified and Rule 26 materials
2 exchanged on or before **December 3, 2010**.

3 The parties may modify the deadline for exchange of expert disclosures by
4 joint stipulation filed with the Court. Pretrial disclosure of the identity of all other
5 persons shall conform to the requirements of Fed. R. Civ. P. 26(a)(1) (persons with
6 relevant knowledge) and 26(a)(3) (witnesses).
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9 6. All discovery shall be completed on or before **December 30, 2010**. The
10 parties shall file no discovery except as necessary to support motions.
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12 7. All dispositive motions shall be filed and served on or before
13 **January 12, 2011**. As with all motions filed in this case, dispositive motions shall
14 comply with the page and time limits set forth in Local Rule 7.1(h). Motions for
15 which expedited consideration is requested must be accompanied by a written
16 request setting forth in detail the reason for an expedited hearing.
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19 Challenges to the admissibility of expert opinion testimony on the basis of
20 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786,
21 2796, 125 L.Ed.2d 469 (1993), shall be made by written motion and filed by
22 **January 12, 2011**. If the party challenging expert testimony anticipates that an
23 evidentiary hearing shall be required, the party shall so advise the Court and
24 opposing counsel in conjunction with the filing of its *Daubert* motions. The party
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1 shall describe the nature of the evidence to be presented and provide an estimate of
2 the amount of time required for the hearing.

3 8. Exhibit lists and witness lists shall be filed and served, and exhibits made
4 available for inspection (or copies provided), on or before **March 3, 2011**. The
5 witness list shall include identification of each witness's testimony. Where
6 feasible, all exhibits identified in depositions shall be pre-marked with the exhibit
7 numbers that will be used at trial. Plaintiff's trial exhibits are to be numbered 1
8 through 199; defendant's exhibits 200 and following.

9 Objections to such lists and any accompanying briefs shall be filed and
10 served on or before **March 10, 2011**. Responses, if any, to objections to witness
11 and/or exhibit list shall be filed and served on or before **March 17, 2011**.

12 Objections shall be heard at the pretrial conference. Copies of the exhibits to
13 which there are objections shall be provided to the Court on or before **March 10,**
14 **2011.**

15 In accordance with Local Rule 83.1(g), each party shall bring to trial, and
16 any other hearing on the merits, photocopies of their relevant pre-marked exhibits
17 for the Court, opposing counsel, and testifying witness, unless it is not possible to
18 do so because of the nature of an exhibit. It is recommended that these
19 photocopies be organized into separate binders.

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1 9. All unresolved substantive or evidentiary issues that may foreseeably
2 arise during trial shall be addressed by motions *in limine* to be filed and served on
3 or before **March 18, 2011**. Responses shall be filed and served on or before
4 **March 25, 2011**. Such motions will be addressed and resolved at the pretrial
5 conference.
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8 10. Designation of substantive, as opposed to impeachment, deposition
9 testimony shall be by highlighting and shall be served on or before **March 3, 2011**.
10 Cross-designations by highlighting in a different color shall be served on or before
11 **March 10, 2011**. Objections to any designated deposition testimony shall be filed
12 and served on or before **March 17, 2011**, and shall be heard and resolved at the
13 pretrial conference. Copies of designations to which there are objections shall be
14 provided to the Court on or before **March 17, 2011**.
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18 11. A joint Pretrial Order, prepared in accordance with the format provided
19 in Local Rule 16.1(b) shall be filed on or before **April 7, 2011**, and a copy e-
20 mailed to the Court at peterasonorders@waed.uscourts.gov.
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22 The list of exhibits contained in the joint Pretrial Order shall reflect the
23 exhibit marking scheme described above. In preparing the joint Pretrial Order, the
24 parties shall confer regarding duplicate exhibits and determine which party will
25 submit such exhibits for trial.
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1 12. A telephonic pretrial conference will be held on **April 19, 2011 at 9:00**
2 **a.m.** At the time scheduled for the pretrial conference, the parties shall call the
3 Court's conference line at (509) 458-6380. The parties should advise the Court if
4 they believe that an in-person pretrial conference would be appropriate.
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6 13. Trial briefs and proposed findings of fact and conclusions of law shall
7 be filed and served on or before **April 7, 2011**.
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9 14. Prior to **April 7, 2011**, the parties shall confer regarding jury
10 instructions. On or before **April 7, 2011**, the parties shall jointly file a complete
11 set of jury instructions that contain copies of each instruction on which the parties
12 agree and copies of each instruction that is disputed (i.e., a copy of each party's
13 proposed version, if any, of an instruction on which they do not agree). All
14 instructions shall be short, concise, understandable, and neutral statements of the
15 law. Argumentative instructions shall not be submitted or given. To be complete,
16 the joint set of instructions must include instructions addressing the elements of
17 each claim or defense, and a proposed verdict form. Instructions need not be
18 submitted on issues that are not unique to this case, such as standard opening and
19 closing instructions. Two copies of each proposed instruction, one cited and one
20 un-cited, shall be filed and a copy e-mailed to the court at
21 *petersonorders@waed.uscourts.gov*. See also Local Rule 51.1.
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1 On or before **April 7, 2011**, each party shall file and serve a legal
2 memorandum addressing any objections the party has regarding any instructions
3 proposed by any other party. In their memoranda, the parties shall identify the
4 specific portion of any proposed instruction to which they object and shall
5 concisely state the basis for the objection. If any of the proposed instructions are
6 modified versions of model instructions, the parties shall identify the modification
7 and legal authority for the modification. Objections asserting that an instruction
8 sets forth an incorrect or inappropriate statement of law shall cite specific legal
9 authority supporting the objection. Failure to file an objection and supporting
10 memorandum may be construed as consent to the adoption of an instruction
11 proposed by another party. Any objection or proposed instruction for which a
12 good faith basis does not exist may result in sanctions. The party proposing a
13 disputed instruction may file a memorandum responding to any other party's
14 objections, but must do so on or before **April 7, 2011**.

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16 15. The **jury** trial shall commence on **May 2, 2011**, at **9:00 a.m.** in
17 **Spokane, Washington**. Counsel estimates a trial length of **two (2) days**. Counsel
18 shall meet in chambers at **8:30 a.m.** on the day of trial.


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20 16. Pursuant to Rule 16 of the Federal Rules of Civil Procedure, this
21 schedule "shall not be modified except upon a showing of good cause and by leave
22 of the court."

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1 [of the Court].” Rule 16(f) of the Federal Rules of Civil Procedure provides for
2 sanctions for failure to obey the Scheduling Order.

3 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
4 enter this Order and to furnish copies to counsel.
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6 **DATED** this 28th day of June, 2010.
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8 
9 s/ Rosanna Malouf Peterson
10 ROSANNA MALOUF PETERSON
11 United States District Court Judge
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